IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5181 OF 2006

Maulana Usman Pathan .. Petitioner.
Versus
Shri.Hamjekhan Usman Pathan
& Others .. Respondents.

Mr.P.G.Lad for petitioner.
Mr.Umesh Mankapure for respondent Nos.1B to 1G.

CORAM : R.M. SAVANT, J.
DATE : 11th June, 2007.

P.C.

1. Rule. By consent of parties made returnable forthwith and heard.

2. This petition impugns the order dated 2nd March, 2006 passed by the Ad-hoc Additional District Judge, Sangli. By the said order, the application for stay pending the appeal filed by the petitioner has been rejected.

3. The factual matrix involved in the present petition is stated thus : -

a) The respondent No.1 was the original plaintiff who had filed

R.C.S.No.254 of 1982 against the petitioner's brother for possession of the property. It appears that the petitioner had made an application for being joined as a party but the same was rejected on the ground that the petitioner is not a necessary party.

b) The respondent No.1 proceeded with the said suit and the same was decreed on 28/10/1993.

c) The respondent No.1 filed execution proceedings being 31 of 1994 and the same were obstructed by the petitioner.

d) The petitioner made an application under Order 21 Rule 56 claiming independent right in the said property, which the respondent No.1

opposed, accordingly issues were framed.

e) The petitioner filed his affidavit of evidence. The petitioner's application was kept for arguments on 22nd February, 2005. The obstructionist's application was heard and disposed of by the Trial Court on 19th January, 2006.

f) Being aggrieved by the said order dated 19/01/2006, the petitioner filed R.C.A. No.61 of 1996 in Execution Petition No.31 of 1994. The said appeal was admitted on 22/02/2006. The petitioner, thereafter moved an application for stay of execution of the decree and the said application was numbered as Exh.6. The said application was heard and rejected. The said application was rejected on the ground

> that basically the decree was passed against the respondent No.2 and he was ordered to be evicted from the suit premises and it was only during the pendency of the suit and execution proceeding, that the appellant i.e. petitioner herein came in the suit property and that the petitioner had accepted that the respondent No.2 was the original tenant. The learned Judge also held that the said application filed in execution proceeding was pending since 1996.

4. I have heard the learned counsel for the respective parties. Mr.Lad contended that the order passed by the trial Court rejecting the petitioner’s application is mis-founded. The trial court admitted the said appeal on 22nd February, 2006 The petitioner’s application for stay of execution of Decree was heard and

rejected; thereby rendering the appeal infructuous. On the other hand, it is contended by the learned Advocate appearing on behalf of the respondent Nos.1B to 1G that the fruits of the decree have been denied to the said respondents since the year 1993. It is further contended that no case for grant of any relief pending the said appeal has been made out by the petitioner.

5. I have considered the rival contentions of both the parties.

6. It is significant to note that the petitioner’s appeal has been admitted by the appellate court and, therefore, in my view pending the said appeal, the petitioner’s right qua the property ought to have been protected; pending the said appeal. If the stay pending the appeal is not granted the said appeal would become infructuous. In my view, the petitioner

deserves to prosecute the said appeal on merits.

7. In that view of the matter, the impugned order dated 2nd March, 2006 is set aside. The interest of justice would be served if status-quo is maintained in respect of the suit property pending the decision in the appeal. The hearing of the appeal is expedited and the appellate court is directed to dispose of the same by 31/08/2007.

8. The amount deposited by the petitioner in this Court on 12th February, 2007 is allowed to be withdrawn by the respondent Nos.1B to 1G subject to the settling of accounts between the parties at the time of finalization of the said appeal.

9. Rule is accordingly made absolute in the aforesaid terms with no order as to costs. The parties to appear in the Appeal before the lower

Appellate Court on 25th June, 2007.

10. All concerned to act upon an authenticated copy of this order.

(R.M. SAVANT, J.)